

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

U

D

BILL DRAFT 2011-RBz-20A [v.1] (03/31)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

5/1/2012 12:57:55 PM

Short Title: Unemployment Insurance Changes.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED
AN ACT TO MAKE CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS.
The General Assembly of North Carolina enacts:

**PART I. CHANGE THE LAW TO CONTINUE THE THREE-YEAR LOOK-
BACK TRIGGER FOR EXTENDED BENEFITS**

SECTION 1.(a) The General Assembly finds that the Governor's Executive Order No. 93, entitled "Extend Unemployment Benefits to Protect the Safety, Health, and Welfare of North Carolina's Long-Term Unemployed", was the purported basis for action by the then Employment Security Commission to provide for the extension of unemployment benefits to thousands of North Carolinians. The extension of unemployment benefits was grounded upon amendments to Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 (the "1970 Act"), as amended by Section 502(b) of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "2010 Act").

SECTION 1.(b) The General Assembly finds that the Governor's Executive Order 113, entitled "Further Extend Unemployment Benefits to Protect the Safety, Health, and Welfare of North Carolina's Long-Term Unemployed" was the purported basis for action by the then Employment Security Commission to provide for the extension of unemployment benefits to thousands of North Carolinians nearing the end of a two-month, federal extension of unemployment benefits under Section 201 of the Temporary Payroll Tax Cut Continuation Act of 2011. That extension, authorized through February 29, 2012, was grounded upon amendments to Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 (the "1970 Act"), as amended by Section 502(b) of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "Tax Relief Act of 2010").

SECTION 1.(c) The General Assembly finds that Section 502(b) of the Tax Relief Act of 2010 specifies that the extension of benefits is to be made only as "the State may by law provide." Section 205(f) of the underlying 1970 Act defines "State law" as the "unemployment compensation law of the State, approved by the [U.S. Secretary of Labor]." In North Carolina, that law is Chapter 96 of the General Statutes, the "Employment Security Law." Nothing in Chapter 96 of the General Statutes, then or now, authorizes the Governor to extend unemployment benefits by Executive Order, nor does Executive Order 93 or Executive Order No. 113, or any other such order, constitute a "State law" within the meaning of the 1970 Act or the North Carolina Constitution. Article II Section 1 of our State Constitution provides that



"The legislative power of the State shall be vested in the General Assembly. Further, Article I, Section 6 of our State Constitution provides that the legislative and executive powers are "...separate and distinct..."

SECTION 1.(d). The General Assembly finds that the people of this State entrusted the creation of laws to the General Assembly, not to the executive branch, and that Executive Order No. 93 and Executive Order No. 113 were issued and acted upon by the executive branch in a manner contrary to the rule of law.

SECTION 1.(e) Further, the General Assembly finds that it enacted Section 6.16 of Session Law 2011-145 and in so doing validated the effects of the Governor's Executive Order No. 113, with the stated intent to allow extended benefits to be paid under the Tax Relief Act of 2010 so long as payment of the extended benefits did not hinder the State's ability to reduce its debt owed to the federal government for unemployment benefits.

SECTION 1.(e) It is deemed, therefore, to be in the best interest of the people of this State that the General Assembly now ratify and hereby validate the effects of the Governor's Executive Order No. 113.

SECTION 1.(f) To maintain the rule of law with respect to State and federal relations pertaining to employment security laws in North Carolina, any executive order issued by the Governor that purports to extend unemployment insurance benefits, whether those benefits will be paid from federal or State funds, is void ab initio, unless the executive order is issued upon authority that is conferred expressly by an act enacted by the General Assembly or granted specifically to the Governor by the Congress of the United States.

SECTION 1.(g) Section 6.16(d) of S.L. 2011-145 reads as rewritten:

"SECTION 6.16.(d) This section becomes effective April 16, 2011, and expires ~~January 1, 2012~~January 1, 2013."

SECTION 1.(h) G.S. 96-12.01(a1)(4)c.3. reads as rewritten:

"3. This section applies as provided under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) as it existed on December 17, 2010, and is applicable to compensation for weeks of unemployment beginning after December 17, 2010, and ending on or before ~~December 31, 2011~~December 31, 2012, provided that:

- I. The average rate of (i) insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in all of the preceding three calendar years and equaled or exceeded five percent (5%) or (ii) total unemployment, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent (6.5%); and
- II. The average rate of total unemployment in this State, seasonally adjusted, as determined by the United States Secretary of Labor, for the three-month period referred to in this subsection, equals or exceeds one hundred ten percent (110%) of the average for any of the corresponding three-month periods ending in the three preceding calendar years."

SECTION 1.(i) G.S. 96-12.01(a1)(4)e. reads as rewritten:

"(4) There is an "on indicator" for this State for a week if the Commission determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediate preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this Chapter:

e. Total extended benefit amount.

3. This subdivision applies as provided under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) as it existed on December 17, 2010, and is applicable to compensation for weeks of unemployment beginning after December 17, 2010, and ending on or before ~~December 31, 2011~~, December 31, 2012, provided that:

I. The average rate of total unemployment, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent (8%); and

II. The average rate of total unemployment in this State, seasonally adjusted, as determined by the United States Secretary of Labor, for the three-month period referred to in this subdivision equals or exceeds one hundred ten percent (110%) of the average for any of the corresponding three-month periods ending in the three preceding calendar years."

SECTION 1.(j) This section is effective when it becomes law and applies retroactively to January 1, 2012.

PART II. RESOLUTION OF OUTSTANDING ISSUES FROM S.L. 2011-401

SECTION 2.(a) The Current Operations Appropriations Act for the 2012-2013 fiscal year shall provide for the annual salaries of the Board of Review, as provided in G.S. 96-4(b).

SECTION 2.(b) G.S. 96-14(2) reads as rewritten:

"§ 96-14. Disqualification for benefits.

An individual shall be disqualified for benefits:

(2) For the duration of the individual's unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Division that such individual is, at the time such claim is filed, unemployed because he or she was discharged for misconduct connected with the work. Misconduct connected with the work is defined as intentional acts or omissions evincing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evincing carelessness or negligence of such degree as to manifest equal disregard.

"Discharge for misconduct connected with the work" as used in this section is defined to include but not be limited to any one or more of the following acts or conduct:

- a. separation—Separation initiated by an employer for violating the employer's written alcohol or illegal drug ~~policy; reporting policy.~~
- b. Reporting to work significantly impaired by alcohol or illegal ~~drugs; consuming drugs.~~
- c. Consuming alcohol or illegal drugs on employer's ~~premises; conviction-premises.~~
- d. Conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said ~~employer; being employer.~~
- e. Being terminated or suspended from employment after arrest or conviction for an offense involving violence, sex crimes, or illegal ~~drugs; any drugs if the offense is related to or connected with an employee's work for an employer or is in violation of a reasonable work rule or policy.~~
- f. Any physical violence whatsoever related to an employee's work for an employer, including, but not limited to, physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general ~~public; inappropriate public.~~
- g. Inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work ~~environment; theft environment.~~
- h. Theft in connection with the ~~employment; forging employment.~~
- i. Forging or falsifying any document or data related to employment, including a previously submitted application for ~~employment; violation employment.~~
- j. Violation of an employer's written absenteeism ~~policy; refusing policy.~~
- k. Refusing to perform reasonably assigned work ~~tasks; and the failure to adequately perform any other employment duties as evidenced by tasks.~~
- l. Intentional acts or omissions evincing disregard of the employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to the employee or evincing careless or negligence of such degree as to manifest equal disregard. For purposes of this sub-subdivision, evidence that an employee has received no fewer than three written reprimands received in the 12 months that immediately preceding-precedes the employee's termination—termination is prima facie evidence of misconduct connected with the work. This

The phrase "discharge for misconduct connected with the work" does not include the discharge or an employer-initiated separation of a severely disabled veteran, as defined in G.S. 96-8, for any act or omission of the veteran that the Division determines are attributed to a disability incurred or aggravated in the line of duty during active military service, or to the veteran's absence from work to obtain care and treatment of a disability incurred or aggravated in the line of duty during active military service."

1 **SECTION 2.(c)** G.S. 96-15(b)(2) reads as rewritten:

2 "(2) Adjudication. – When a protest is made by the claimant to the initial or
3 monetary determination, or a question or issue is raised or presented as to the
4 eligibility of a claimant under G.S. 96-13, or whether any disqualification
5 should be imposed under G.S. 96-14, or benefits denied or adjusted pursuant
6 to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator
7 may consider any matter, document or statement deemed to be pertinent to
8 the issues, including telephone conversations, and after such consideration
9 shall render a conclusion as to the claimant's benefit entitlements. The
10 adjudicator shall notify the claimant and all other interested parties of the
11 conclusion reached. The conclusion of the adjudicator shall be deemed the
12 final decision of the Division unless within 30 days after the date of
13 notification or mailing of the conclusion, whichever is earlier, a written
14 appeal is filed pursuant to rules adopted by the Division. The Division shall
15 be deemed an interested party for such purposes and may remove to itself or
16 transfer to an appeals referee the proceedings involving any claim pending
17 before an adjudicator.

18 Provided, any interested employer shall be allowed ~~30~~10 days from the
19 ~~earlier of mailing or~~ delivery of the notice of the filing of a claim against the
20 employer's account to protest the claim and have the claim referred to an
21 adjudicator for a decision on the question or issue raised. A copy of the
22 notice of the filing shall be sent contemporaneously to the employer by
23 telefacsimile transmission if a fax number is on file. Provided further, no
24 question or issue may be raised or presented by the Division as to the
25 eligibility of a claimant under G.S. 96-13, or whether any disqualification
26 should be imposed under G.S. 96-14, after 45 days from the first day of the
27 first week after the question or issue occurs with respect to which week an
28 individual filed a claim for benefits. None of the provisions of this
29 subsection shall have the force and effect nor shall the same be construed or
30 interested as repealing any other provisions of G.S. 96-18.

31 An employer shall receive written notice of the employer's appeal rights
32 and any forms that are required to allow the employer to protest the claim.
33 The forms shall include a section referencing the appropriate rules pertaining
34 to appeals and the instructions on how to appeal."

35 **SECTION 2.(d)** G.S. 96-15(f) reads as rewritten:

36 "(f) Procedure. – The manner in which disputed claims shall be presented, the reports
37 thereon required from the claimant and from employers, and the conduct of hearings and
38 appeals shall be in accordance with rules adopted by the Division for determining the rights of
39 the parties, whether or not such ~~regulations~~rules conform to common-law or statutory rules of
40 evidence and other technical rules of procedure. All testimony at any hearing before an appeals
41 referee upon a disputed claim shall be recorded unless the ~~the~~ parties have waived the
42 evidentiary hearing and entered into a stipulation resolving the issues pending before the
43 appeals referee, hearing officer, or other employee assigned to make the ~~decision~~decision. The
44 appeals referee, hearing officer, or other employee assigned to make the decision may either
45 accept or reject the stipulation. If the stipulation is rejected, the parties may appeal the decision
46 to the Board of Review. but If the testimony is recorded, it need not be transcribed unless the
47 disputed claim is further appealed and, one or more of the parties objects, under such rules as
48 the Division may adopt, to being provided a copy of the tape recording of the hearing. Any
49 other provisions of this Chapter notwithstanding, any individual receiving the transcript shall
50 pay to the Division such reasonable fee for the transcript as the Division may by regulation
51 provide. The fee so prescribed by the Division for a party shall not exceed the lesser of

sixty-five cents (65¢) per page or sixty-five dollars (\$65.00) per transcript. The Division may by regulation provide for the fee to be waived in such circumstances as it in its sole discretion deems appropriate but in the case of an appeal in forma pauperis supported by such proofs as are required in G.S. 1-110, the Division shall waive the fee."

SECTION 2.(e) This section becomes effective November 1, 2012.

**PART III. COMPLIANCE WITH THE TRADE ADJUSTMENT ASSISTANCE
EXTENSION ACT OF 2011: NEW HIRE DIRECTORY**

SECTION 3.(a) G.S. 110-129.2(c) reads as rewritten:

"(c) Report Contents. – Each report required by this section shall contain the name, address, ~~and~~ social security number of the newly hired employee, the date services for remuneration were first performed by the newly hired employee, and the name and address of the employer and the employer's identifying number assigned under section 6109 of the Internal Revenue Code of 1986 and the employer's State employer identification number. Reports shall be made on the W-4 form or, at the option of the employer, an equivalent form, and may be transmitted magnetically, electronically, or by first-class mail."

SECTION 3.(b) G.S. 110-129.2(j) is amended by adding a new subdivision to read:

"(j) Definitions. – As used in this section, unless the context clearly requires otherwise, the term:

...

(5) "Newly hired employee" means both an employee who has not previously been employed by the employer as well as an employee who was previously employed by the employer but has been separated from such prior employment for at least 60 consecutive days."

SECTION 3.(b) This section becomes effective July 1, 2012.

PART IV. EFFECTIVE DATES

SECTION 4. Except as otherwise provides, this act is effective when it becomes law.